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BILL



ANALYSIS

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Senate Bill 227 (as enacted)
Sponsor: Senator Irma Clark-Coleman
Senate Committee: Families and Human Services
House Committee: Families and Children's Services

PUBLIC ACT 15 of 2009

Date Completed: 7-28-09

RATIONALE

When a child who has been the victim of abuse or neglect is under the jurisdiction of the family court, grandparents or other relatives often are willing to care for the child, either temporarily or as permanent guardians if necessary. Many believe that such arrangements are in the best interest of the child, who may feel more comfortable staying with a known relative than being placed in the foster care system. Given the substantial costs of raising a child, however, many relatives simply cannot afford to take on that responsibility without some financial assistance, especially if a child has special needs. Unlike foster care providers, such guardians previously did not receive any financial support from the Department of Human Services (DHS).

In 2008, the Subsidized Guardianship Assistance Act was enacted to permit the DHS to pay assistance to a court-appointed legal guardian on behalf of a child under certain circumstances. Before that Act was implemented, changes to Federal law made matching funds available to support guardianship assistance if a program conforms to certain Federal requirements. It was suggested that the Subsidized Guardianship Assistance Act be revised to meet those requirements, in order to allow the program to qualify for Federal funding.

CONTENT

The bill amended the Subsidized Guardianship Assistance Act to do the following:

- **Rename the Act the "Guardianship Assistance Act", and replace references to "subsidized guardianship assistance" with "guardianship assistance" throughout the Act.**
- **Revise the criteria for a child to be eligible for guardianship assistance.**
- **Require a guardian to be a licensed foster parent, and to undergo a criminal background check and a central registry check for child abuse and neglect.**
- **Allow the DHS to enter into a written, binding, guardianship assistance agreement with a prospective guardian.**
- **Require the DHS to pay up to \$2,000 for the total cost of nonrecurring expenses associated with obtaining legal guardianship of an eligible child.**
- **Require the DHS, if a child's permanency plan includes placement with a guardian and the receipt of guardianship assistance, to include in the case service plan the steps taken to determine that reunification or adoption is not appropriate, among other information.**

The bill also specifies that only a relative who is a licensed foster parent caring for a child who is eligible to receive Title IV-E-funded foster care payments for six consecutive months is eligible for Federal funding under Title IV-E for guardianship assistance, although a child who is not eligible for Title IV-E funding who is placed with a

licensed foster parent may be eligible for State-funded guardianship assistance.

The bill took effect on April 9, 2009.

Child Eligibility

Previously, a child was eligible to receive subsidized guardianship assistance if he or she was a ward of the court under Section 2(b) of the juvenile code (e.g., due to abuse, neglect, or abandonment) or was under the jurisdiction, control, or supervision of the Michigan Children's Institute, and both of the following applied:

- Specific factors or conditions made it reasonable to conclude that the child could not be placed with a guardian without the provision of subsidy payments under the Act.
- A reasonable but unsuccessful effort was made to place the child with an appropriate guardian without the provision of subsidy assistance, or a prospective placement was the only placement in the best interest of the child.

The bill deleted those provisions. Instead, a child is eligible to receive guardianship assistance if the DHS determines that all of the following apply:

- The child has been removed from his or her home as a result of a judicial determination that allowing him or her to remain in the home would be contrary to his or her welfare.
- The child has resided in the home of the prospective guardian for at least six consecutive months.
- Reunification or placing the child for adoption is not an appropriate permanency option.
- The child demonstrates a strong attachment to the prospective guardian, and the guardian has a strong commitment to caring for the child permanently.
- If the child has reached 14 years of age, he or she has been consulted regarding the guardianship arrangement.

In addition, the child must reside in the prospective guardian's residence for at least six months before the DHS receives the application for guardianship assistance.

(The Act previously required the eligible child to reside with the guardian in the guardian's residence, but did not include a minimum time period.)

Guardian Eligibility

The Act previously required a guardian to be assessed and approved for guardianship assistance by the DHS before receiving guardianship assistance. The bill requires a guardian to be a licensed foster parent and approved for guardianship assistance. The approval process must include criminal record checks and child abuse and neglect central registry checks on the guardian and all adults living in his or her home, as well as fingerprint-based criminal record checks on the guardian. If the guardian's fingerprints are stored in the automated fingerprint identification system (AFIS) under the child care licensing Act, the DHS must use those fingerprints for the criminal record check. (That Act requires applicants for a foster care home license to undergo criminal history checks, and requires the State Police to store fingerprints submitted under the Act in an AFIS database.)

Guardianship Agreement

Under the bill, for a child and a guardian who are eligible to receive guardianship assistance, the DHS may negotiate and enter into a written, binding guardianship assistance agreement with the child's prospective guardian, and must give him or her a signed copy of the agreement.

The agreement must specify all of the following:

- The amount of the guardianship assistance to be provided under the agreement for each eligible child, and the manner in which the payment may be adjusted periodically in consultation with the guardian, based on his or her circumstances and the child's needs.
- The additional services and assistance the child and the guardian will be eligible for under the agreement.
- The procedure by which the guardian may apply for additional services if needed.
- That the DHS will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of an eligible

child, to the extent that the total cost does not exceed \$2,000.

The agreement must remain in effect without regard to the State residency of the guardian.

A guardianship assistance payment on a child's behalf may not exceed the foster care maintenance payment that would have been paid on that child's behalf if he or she had remained in a foster family home.

Permanency Plan

Under the bill, for a child whose permanency plan includes placement with a guardian and will include the receipt of guardianship assistance payments, the DHS must include in the child's case service plan all of the following:

- The steps that the child placing agency or the DHS has taken to determine that reunification or placing the child for adoption is not an appropriate permanency option.
- The reason for any separation of siblings during placement.
- The reason a permanent placement through guardianship is in the child's best interest.
- The way in which the child meets the eligibility requirements for a guardianship assistance payment.

The service case plan also must include the efforts the child placing agency or the DHS has made to discuss adoption by the prospective guardian as a permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons.

In cases in which the parental rights have not been terminated, the service case plan must include the efforts the DHS has made to discuss with the child's birth parent or parents the guardianship assistance agreement, or the reasons that the efforts were not made.

The Act previously defined "subsidized guardianship assistance agreement" as an agreement regarding financial support for children who meet the qualifications for subsidized guardianship assistance as specified in the Act or in the Department's

administrative rules. The bill replaced that with a definition of "guardianship assistance agreement", which is the same except that it refers to a "negotiated binding agreement" and omits "subsidized".

Rights of Guardian

Under the bill, the legal guardianship is a judicially created relationship between the child and his or her guardian, as provided in Sections 19a and 19c of the juvenile code (which deal with permanency planning hearings, placement review hearings, and the appointment of a guardian after the termination of parental rights), that is intended to be permanent and self-sustaining as shown by the transfer to the guardian of the following parental rights with respect to the child:

- Protection.
- Education.
- Care and control of the person.
- Custody of the person.
- Decision making.

Title IV-E Assistance

The bill provides that only a relative who is a licensed foster parent caring for a child who is eligible to receive Title IV-E-funded foster care payments for six consecutive months is eligible for Federal funding under Title IV-E for guardianship assistance. A child who is not eligible for Title IV-E funding who is placed with a licensed foster parent, related or unrelated, and who meets the bill's eligibility criteria, may be eligible for State-funded guardianship assistance.

If a child is eligible for Title IV-E-funded guardianship assistance but has a sibling who is not eligible, then the child and any of the child's siblings may be placed in the same relative guardianship arrangement in accordance with the juvenile code if the DHS and the relative agree on the appropriateness of the arrangement for the sibling. Title IV-E-funded relative guardianship assistance may be paid on behalf of each sibling placed under that provision.

"Title IV-E" (of the Social Security Act) refers to the Federal assistance provided through the U.S. Department of Health and Human Services to reimburse states for foster care, adoption assistance payments,

and, under the bill, guardianship assistance payments.

Annual Review

The bill retained requirements that the DHS review the eligibility of a guardian and child for continuation of guardianship assistance annually, and that the guardian provide the eligibility information requested by the DHS for purposes of the annual review. Previously, this also referred to information requested by the court.

Termination of Assistance

The bill deleted provisions under which the DHS could not provide subsidized guardianship assistance after one of the following occurred:

- The child reached 18 years of age, or 19 if he or she was still attending high school.
- The child was incarcerated in an adult correctional facility under a sentence and commitment order of a court.
- The child was placed in a child caring institution for at least 90 days.
- The child was removed from the guardian's residence by court order.
- The child no longer resided in the guardian's residence.
- The guardian failed to submit information required or requested by the DHS for the annual review.
- The guardian no longer satisfied one or more of the criteria for subsidized guardianship assistance.
- The guardian died and no new guardian was appointed by the court within 30 days after that death.
- The DHS determined that funds no longer were available to support continuation of subsidized guardianship assistance.

Instead, under the bill, the DHS may not provide guardianship assistance after one of the following occurs:

- The child reaches 18 years of age.
- The DHS determines that the guardian no longer is legally responsible for support of the child.
- The DHS determines that the child no longer is receiving any support from the relative guardian.
- The guardian dies.

The bill retained provisions requiring termination of assistance if the child dies, the child is adopted by the guardian or another individual, or the guardianship is terminated by order of the court having jurisdiction in the guardianship proceeding.

Repeal

The bill repealed Section 10 of the Act, which specified that if Title IV-E eligibility was approved as a funding source for subsidized guardianship assistance, the DHS was subject to all Federal laws and regulation requirements, including cooperation with the Title IV-B program and assignment of child support. (Title IV-B of the Social Security Act deals with Child Welfare Services.)

MCL 722.871 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill revised the guardianship assistance program to allow it to qualify for Federal matching funds under the Foster Connections to Success and Increasing Adoptions Act, enabling the State to make better use of limited resources. The payments will go to support only those children who otherwise would be in foster care, and the amounts are limited to what the children would have received under the foster care program. These provisions set strict boundaries on the scope and cost of the program, and will provide a better outcome and permanent placement for the children. Although the guardianship assistance program may see an initial surge in applicants, those applicants otherwise would receive foster care payments. The bill merely shifts the resources from foster care to guardianship assistance. This will help to provide a more permanent, stable home environment for a child by enabling him or her to be placed with a permanent guardian, who generally will be a relative or another adult familiar to the child. Without assistance, potential guardians often lack the resources to raise a child on their own. By extending some support to those individuals, the bill will help move children out of foster care and into more permanent

placements. The bill provides for a binding agreement between a guardian and the DHS, and gives the individual parental rights over the child, signifying a long-term commitment to raising the child, in contrast to the uncertainty of a foster care placement.

The bill also adds strict assessment requirements for a guardian to qualify for assistance, including a criminal background check and a central registry check for all adults living in the home, as well as consultation with the child if he or she is at least 14 years old. These provisions reflect Federal requirements and will help ensure that the placement is appropriate and does not endanger the child.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The Federal Foster Connections to Success and Increasing Adoptions Act was passed by Congress and signed by the President in October 2008. The legislation made a number of modifications in Federal standards related to financing the provision of services to youths in foster care. One of the major modifications of the Act was to permit Federal reimbursement through Title IV-E of the Social Security Act to children in guardianship arrangements.

In 2008, the State of Michigan enacted the Subsidized Guardianship Assistance Act, which permits use of State General Fund/General Purpose (GF/GP) dollars for subsidized guardianship arrangements. The FY 2008-09 DHS appropriation allocated \$4,575,000 GF/GP for operation of the subsidized guardianship program. This bill aligns the requirements for guardianship assistance in Michigan with the eligibility criteria for payment through Title IV-E of the Social Security Act. The bill will permit the State to obtain Title IV-E reimbursement for guardianship arrangements, reducing State expenditure per child by about 65%. Total GF/GP savings will be driven by the number of children in guardianships eligible for Title IV-E reimbursement. The Senate version of the DHS FY 2009-10 appropriation assumed GF/GP savings of \$1.5 million associated with Federal policy changes related to subsidized guardianship.

Fiscal Analyst: David Fosdick

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.